

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE LANDS COUNCIL, a
Washington nonprofit
corporation, HELLS CANYON
PRESERVATION COUNCIL, an
Oregon nonprofit corporation,
OREGON NATURAL RESOURCES
COUNCIL, an Oregon nonprofit
corporation, and SIERRA CLUB,
a California nonprofit
corporation,

Plaintiffs,

v.

KEVIN MARTIN, Forest
Supervisor of the Umatilla
National Forest, and the
UNITED STATES FOREST SERVICE,
an agency of the United
States Department of
Agriculture,

Defendants,

and

AMERICAN FOREST RESOURCE
COUNCIL, an Oregon
corporation; BOISE BUILDING
SOLUTIONS MANUFACTURING, LLC,
a Washington limited
liability company; and Dodge
Logging, Inc., an Oregon
corporation,

Defendant-Intervenors.

NO. CV-06-0229-LRS

ORDER RE: POST-PRELIMINARY
INJUNCTION MARKING AND
VERIFICATION

BEFORE THE COURT is Defendant's Motion for Preliminary
Injunction, Ct. Rec. 94, filed February 14, 2007; Plaintiffs' Motion

1 to Implement Preliminary Injunction, Ct. Rec. 97, filed February 15,
2 2007; and Plaintiffs' Amended Motion to Implement Preliminary
3 Injunction, Ct. Rec. 101, filed February 16, 2007.

4 Pursuant to the judgment of the Ninth Circuit Court of Appeals
5 filed and entered on February 12, 2007, the captioned matter was
6 remanded to this court with instructions to grant immediately a
7 preliminary injunction with respect to Plaintiffs' claim under the
8 National Forest Management Act ("NFMA"). On February 14, 2007, this
9 Court entered an Order Granting Plaintiffs' Preliminary Injunction In
10 Part (Ct. Rec. 96), which precipitated the above-mentioned motions
11 from both sides relating to implementation of the preliminary
12 injunction order.

13 Plaintiffs request that this Court preliminarily enjoin
14 Defendants from School Fire logging project activities until the
15 Forest Service has marked the School Fire logging sales units in an
16 effort to ensure that large, live trees within the School Fire
17 perimeter are not harvested pursuant to the Final Environmental Impact
18 Statement and Record Decision. Plaintiffs ask that they be allotted
19 time to review and verify that no trees are marked for cutting in
20 violation of the Eastside Screens. Further, Plaintiffs request that
21 the Defendants be required to notify Plaintiffs and this Court once
22 the marking/re-marking is completed.

23 At the telephonic status conference held pursuant to this matter
24 on April 13, 2007, Defendants argued that the Forest Service should be
25 afforded the presumption of compliance with regard to the February,
26 2007 Preliminary Injunction issued in accordance with the mandate and

1 opinion of the Ninth Circuit. Defendants further explained that
2 timing, expense and safety of any untrained persons involved in the
3 verification process were issues that caused them concern regarding
4 any marking and verification directive the Court may issue.

5 Without abandoning their stated positions, Plaintiffs and
6 Defendants generally agreed that a staggered marking schedule would be
7 workable as long as it was timely and logistically reasonable. As for
8 the verification of the marking requested by Plaintiffs, counsel
9 indicated that Plaintiffs would be amenable to a sampling approach
10 whereby selected marked trees would be observed and deemed to
11 represent an area for compliance of the preliminary injunction. The
12 Defendants suggest that re-marking of the sales area could be
13 completed by a four person crew in approximately one month, depending
14 on the number of employees assigned to the task.

15 The Court, having considered the written and oral arguments of
16 the parties, hereby enters the following order to resolve any concerns
17 regarding the implementation of the preliminary injunction ordered on
18 February 14, 2007. Accordingly,

19 **IT IS ORDERED** that:

20 1. Before restarting logging activities which involve the cutting
21 of trees, the Forest Service shall arrange to have all live trees that
22 are equal to or greater than 21 inches dbh [diameter at breast height]
23 marked/re-marked with appropriate paint in the Oli and Sun units ¹ The
24 Forest Service and Plaintiffs shall cooperate in an effort to stagger

25 ¹The Court has been informed that the Milly unit has been completed
26 for cutting and yarding pursuant to the sale.

1 areas to be marked. Verification through sampling and observation by
2 Plaintiffs shall occur as hereafter set forth.

3 2. The Plaintiffs may arrange with Defendants to have Plaintiffs'
4 representatives verify the marked trees in a reasonable manner, i.e., in
5 stages by sampling method, for compliance with the preliminary injunction
6 and this order in the Oli and Sun areas. When approximately 50 percent
7 of the trees have been marked/re-marked, Plaintiffs shall be given prompt
8 notice of the area(s) which have been marked/re-marked and shall be
9 permitted access thereto to confirm through sampling techniques and
10 observation that no non-hazardous live trees 21 inches dbh or greater
11 have been marked for removal. The same procedure (notice and access)
12 shall be followed as soon as the remaining trees have been marked/re-
13 marked by Defendant U.S. Forest Service. Plaintiffs shall conclude their
14 sampling and observation activities within 10 days after receipt of
15 written notification through Plaintiffs' counsel as to the areas included
16 therewith. Except as hereafter set forth, logging may recommence at the
17 end of each verification period in accord with the terms of the Court's
18 earlier preliminary injunction unless the same is precluded by further
19 order of the Court, following an expedited hearing as provided in
20 paragraph 3 hereafter.

21 Plaintiffs and their representatives shall proceed with their
22 verification and observation activities at a time and under circumstances
23 where interference does not occur with ground operations and safety is
24 fully assured.

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1 3. If the parties are unable to resolve any disputes over marketing
2 determinations, the matter(s) shall be submitted on an expedited basis to
3 the Court for resolution.

4 4. Although the foregoing provisions apply to sales which have
5 already been undertaken, nothing contained herein shall permit either
6 party to engage in activities inconsistent with the 9th Circuit's opinion
7 and the earlier preliminary injunction entered herein.

8 5. Except as otherwise set forth above and in the Order Granting
9 Plaintiffs' Preliminary Injunction In Part, Ct. Rec. 96, the following
10 motions are **DENIED**:

11 a. Defendant's Motion For Preliminary Injunction, Ct. Rec 94;

12 b. Plaintiffs' Motion To Implement Preliminary Injunction, Ct.
13 Rec. 97; and

14 c. Plaintiffs' Amended Motion To Implement Preliminary
15 Injunction, Ct. Rec. 101.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter
17 this Order and provide copies to counsel.

18 **DATED** this 20th day of April, 2007.

19 ***s/Lonny R. Suko***

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21 Lonny R. Suko
22 United States District Judge
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